REMARKS

Claims 1-34 are now pending in the application. The Examiner has stated in his remarks that this is a final office action; however, the Examiner stated on the office action summary that this action is non-final. Applicant assumes that this action is non-final as indicated on the office action summary. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

DOUBLE PATENTING REJECTION

The Examiner stated that Claims 1-8, 11, 12, 14-21 and 24-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-36 of co-pending Application No. 09/767,202 in view of Smiley. Applicant has amended independent Claims 1, 14 and 26, and as discussed below, asserts Claims 1, 14 and 26 now define over Smiley.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-6 and 14-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Figure 1 in view of Smiley, Ullman et al. (U.S. Pat. No.5,903,583, hereinafter Ullman) and Brauch et al. (U.S. Patent No. 5,553,088, hereinafter Brauch). Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over what the Examiner asserted is admitted prior art, Smiley, Ullman and Brauch as applied to claim 6 above, and further in view of Powell et al. (U.S. Patent No. 4,849,036, hereinafter Powell). Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Applicant's Figure 1, Smiley, Ullman, and Brauch as applied to claim 18 above, and further in view of Powell. Claims 11 and 12 are rejected under 35

U.S.C. 103(a) as being unpatentable over Applicant's Figure 1 in view of Smiley, Ullman, and Brauch as applied to claim 1, above, and further in view of Meissner et al. (U.S. Patent No. 5,936,984, hereinafter Meissner). Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Figure 1 in view of Smiley, Ullman, and Brauch as applied to claim 14 above, and further in view of Meissner. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Figure 1 in view of Smiley, Ullman, and Brauch as applied to claim 1, above, and further in view of Basu. Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Figure 1 in view of Brauch. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Figure 1 in view of Brauch as applied to Claim 31 above, and further in view of Meissner. These rejections are respectfully traversed.

At the outset, Applicants note independent Claims 1, 14 and 26 have been amended to include "a plurality of discrete laser gain medium elements." Applicants respectfully assert Smiley that does not teach, or suggest this feature as claimed. In particular, Smiley discloses "a thin film 18...divided into a plurality of sections..." (Col. 3, lines 65-66). Smiley teaches a single film 18 "scribed to divide it into an appropriate number of cells." (Co. 3, lines 70-71). Applicant asserts that even with the scribing, Smiley does not appear to use a plurality of discrete elements, but rather a single element etched into divisions. Accordingly, Smiley does not teach, or suggest "a plurality of discrete laser gain elements" as claimed. (Emphasis added).

The Examiner states it would have been obvious to modify Smiley to arrive at Applicants claimed invention. Applicants respectfully submit the Examiner's

modification of Smiley to include a plurality of individual elements is improper. Specifically, the mere fact that prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1783-1784 (Fed. Cir. 1992). Smiley makes no mention of having individual laser gain medium elements, each in contact with the substrate as claimed. Furthermore, it is improper to assume that the ordinary artisan would be motivated to modify Smiley to "reduce the possibility of oscillation" because at the time of Smiley's invention, it was seen to solve this problem. To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher. In re Fine, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (citing W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983)). Accordingly, Applicant asserts amended Claims 1, 14 and 26 define over Smiley. Applicant also submits that neither the inventions of Brauch, Ullman, Meissner, Powell, Basu nor Applicant's Figure 1 teach or suggest a laser including "a plurality of individual laser gain medium elements" as claimed. Accordingly, Applicant believes independent Claims 1, 14 and 26 are in condition for allowance.

Applicants further note claims 2-8, 11, 12, 15-21, 24, 25 and 27-32 depend directly or indirectly from independent claims 1, 14 and 26, and thus are also believed to be in form for allowance. Reconsideration and withdrawal of these rejections is therefore respectfully requested.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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